IN THE COURT OF APPEALS OF THE STATE OF ALASKA

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| CHRISTOPHER L. EIDE,<br><br>Appellant,<br><br>v.<br><br>STATE OF ALASKA,<br><br>Appellee. | Court of Appeals Nos. A-11219 & A-11279<br>Trial Court Nos. 1KE-11-1043 CR &<br>1KE-08-270 CR<br><br>MEMORANDUM OPINION<br><br>No. 6328 — May 11, 2016 |

Appeal from the District Court, First Judicial District, Ketchikan, Kevin G. Miller, Judge.

Appearances: Megan Webb, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Nicholas A. Polasky, Assistant District Attorney, and Michael C. Geraghty, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Hanley, District Court Judge.*

Judge MANNHEIMER.

Christopher L. Eide appeals his conviction for fourth-degree assault. He also appeals the sentence he received for this crime (360 days' imprisonment with 180

* Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

days suspended), and the additional sentence of 90 days' imprisonment he received when the court revoked his probation from an earlier case.

With regard to his fourth-degree assault conviction, Eide contends that his trial was rendered unfair because of an evidentiary ruling by the trial judge. For the reasons explained in this opinion, we conclude that any error in the judge's evidentiary ruling was harmless, given the facts of this case.

With regard to his composite sentence of 270 days to serve, Eide contends that this sentence is unlawful because the judge lacked a sufficient basis for finding Eide to be a "worst offender". But because Eide's composite sentence of 270 days to serve is less than the 1-year maximum sentence for fourth-degree assault, the sentencing judge was not required to find that Eide was a worst offender.

For these reasons, we affirm the judgement of the district court.

*The evidentiary ruling that is challenged on appeal*

Eide was charged with fourth-degree assault based on evidence that he assaulted his girlfriend, Sidney Hartley. The State alleged that Eide went out drinking with friends and, when he returned home, he threw his keys in Hartley's face, pushed two fingers down her throat, hit her several times, and grabbed her by the neck.

In advance of Eide's trial, the State gave notice that it intended to introduce evidence of three prior crimes of violence that Eide had committed against other women — conduct that led to Eide's prior convictions for fourth-degree assault, third-degree assault, and harassment. Following a hearing on these matters, the district court ruled that the State would be allowed to introduce evidence of these prior crimes.

This ruling — *i.e.*, the admissibility of evidence that Eide had committed three acts of domestic violence in the past — is not challenged on appeal. Rather, Eide

challenges a separate ruling that the trial judge made regarding the *details* of one of these prior incidents.

This issue arose because, at Eide's trial, his girlfriend Sidney Hartley recanted her prior accusation that Eide had assaulted her. Hartley conceded that she had sustained a head injury on the day in question, but she declared that her earlier accusation against Eide had been a lie — that, in fact, she sustained her head injury when she bent down to pick something up and accidently bumped her head.

In response to Hartley's recantation, the prosecutor called Officer Devin Miller of the Ketchikan Police Department to the stand. Miller was the officer who investigated one of Eide's prior crimes of domestic violence: an assault that he committed upon Frances Shaw in 2008. (According to the State's offer of proof, Eide invited Shaw to stay with him at a hotel. On their third night together, Eide and Shaw argued; during this argument, Eide pulled her hair, threw her on the bed, and punched her several times.)

The prosecutor wished to have Officer Miller testify that, in that 2008 case involving the assault on Shaw, Eide initially claimed that Shaw's injuries were the result of an attack by a stranger (not an attack by Eide). (After further questioning, Eide admitted that he had assaulted Shaw.)

Eide's attorney objected to this proposed line of questioning. The defense attorney argued that even if Eide initially lied about assaulting Shaw, this fact was not admissible. The trial judge concluded, however, that Eide's attempt to cover up the 2008 assault had become relevant, in light of Sidney Hartley's testimony that Eide had not assaulted her. The judge therefore overruled the defense attorney's objection to the proposed testimony.

On appeal, Eide presents two arguments why the judge's ruling on this point was error.

First, Eide argues that this evidence — *i.e.*, the evidence that he initially lied about who had assaulted Shaw — was inadmissible because it tended to show that Eide was an untruthful person. But though this evidence may have suggested that Eide was an untruthful person, the evidence was not offered for the purpose of proving Eide's character. Instead, the evidence was offered to suggest that Eide and Hartley were now colluding to obtain Eide's acquittal, in a manner similar to the way Eide initially lied about the 2008 case. This was a case-specific relevance, distinct from the issue of whether Eide was characteristically dishonest.

Second, Eide contends that even if he initially lied to the police about how Shaw sustained her injuries in 2008, this fact was irrelevant to the issue of whether the jury should credit Hartley's recantation in the present case. More specifically, Eide contends that the State presented no direct evidence that he threatened or pressured Shaw to give a false account to the police in 2008, nor any direct evidence that Eide actively colluded with Shaw to present a false account to the police.

Eide suggests that the State's evidence simply showed that *he* was willing to lie about an incident of domestic violence — something that, even if true, had no relevance to the question of whether his girlfriend Hartley would lie about what happened in the present case.

Having reviewed the record, we are convinced that even if the trial judge's evidentiary ruling on this issue was incorrect, the error in admitting the challenged evidence was harmless. Eide does not dispute that the underlying occurrence from 2008 — *i.e.*, Eide's assault upon Shaw — was admissible under Evidence Rule 404(b)(4) to prove Eide's propensity to assault his domestic partners. Indeed, Eide does not challenge the trial judge's ruling that *all three* of Eide's prior domestic assaults were admissible.

Given the admissibility of all this evidence, we conclude that there is no reasonable likelihood that the jury's verdict was appreciably affected by the evidence that Eide initially lied to the police about the 2008 assault. [1]

*Eide's sentence appeal*

Eide was convicted of fourth-degree assault, a class A misdemeanor. [2] The maximum penalty for this crime is 1 year's imprisonment. [3]

At Eide's sentencing hearing, the district court found him to be a "worst offender" — a finding that authorized the judge to impose the maximum sentence. [4] However, the judge did not impose the 1-year maximum sentence. Rather, the judge sentenced Eide to a composite 270 days' imprisonment.

On appeal, Eide challenges the district court's finding that he was a "worst offender". But because the district court did not impose a maximum sentence, this claim is moot. [5]

*Conclusion*

The judgement of the district court is AFFIRMED.

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[1] *See Love v. State*, 457 P.2d 622, 634 (Alaska 1969) (holding that, for instances of non-constitutional error, the test for harmlessness is whether the appellate court "can fairly say that the error did not appreciably affect the jury's verdict").

[2] AS 11.41.230(b).

[3] AS 12.55.135(a).

[4] *State v. Wortham*, 537 P.2d 1117, 1120 (Alaska 1975); *Napayonak v. State*, 793 P.2d 1059, 1062 (Alaska App. 1990).

[5] *Douglas v. State*, 151 P.3d 495, 506 (Alaska App. 2006).